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Supreme Court, U.S.
FILED
DEC 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

RAFAEL M. MONTANO, M.D., Appellant,

v.

PRINCE GEORGE'S COUNTY, MARYLAND, et al.
Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JURISDICTIONAL STATEMENT

RAFAEL M. MONTANO, M.D.,
Union Trust Building
850 Sligo Ave., Suite 501
Silver Spring, Md. 20910

Pro se

100 pp

QUESTION PRESENTED

Whether the " clear" appearance of not making a prima facie showing (for Title VII purposes) can be legally sufficient to properly and indefinitely suspended the constitutional guarantees of any individual, i.e.,whether civil rights are conditional to successfully passing the prima facie test enunciated by this Court in McDonnel Douglas Corp. v. Green. More specifically, whether an employer,from his privileged position in the market place, is legally authorized to indefinitely seize an employee's professional life, liberty, and property when it clearly appears that such an employee (a mexican individual, born, educated and trained in Mexico as a physician, lawfully practicingin Maryland) will not succeed in making a prima facie showing of racial discrimination. In other words, whether due process of law is interchangeable with the burden of establishing a prima facie case of racial discrimination.

Rafael M. Montano, M.D.,

Plaintiff - Appellant,

versus

Hospital Commission of Prince George's County, Maryland; and Benjamin Pecson, M.D., Chairman, Board of Directors; and Raleigh Cline, Chief Executive Officer; and Haluk Boneval, M.D., President of Medical Staff; and William B. Hagan, M.D., Acting Director of Medical education; and Less S. Alt, Administrative Asistant; and Frederick Wilhelm, M.D.; and Department of Family Practice: Asistant Program Coordinator, Janet Avery, M.D.; and Department of Family Practice, Asistant Program Coordinator, Samuel Alleyne, M.D.; and Mr. Degeorge, Corporate Attorney for PGGH and Department of Security Chief, Albert Kulle,

Defendants - Appellees

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Bakke v. Regents of the University of California 438 U.S. 265 (1978).

Regents of University of Californis v. Public Employment Relations Board, 41 Cal 3d 601, 224 Cal. Rptr. 631,715 p. 2d 590 (Cal. Sup. Ct., April 3, 1986).

Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602,16 L.ED. 2d 694.

Mc. Donnel Douglas Corp. v. Green 411 U.S.792.

Gertz v. Robert Welch, Inc., 418 U.S. 323, 41 L. Ed. 2d 789, 94 S. Ct. 2997 (1974).

United States v. Mendenhall, 446 U.S. 544, (1980).

United States v. Dozier, C.A. La. 1982, 672 F. 2d 531, rehearing denied 677 F. 2d 113, certiorari denied 103 S. Ct. 256, 459 U.S. 943, 74 L. Ed. 2d 200.

United States v. Adocock, C.A. Iowa 1977, 558 F. 2d 397, Certiorari denied 98 S. Ct. 395, 434 U.S. 921,54 L. Ed. 2d 277.

Turpin v. Mailet 579 F. 2d 152, 164,165, vacated 439 U.S. 974, 439 U.S. 988, 99 S.Ct 586 58L. Ed. 2d 622 (1978) on remand 591 F. 2d 426 (1979), appeal after remand 619 F. 2d. 196 (1980),certioraridemied 449 U.S. 1016, 101 S. Ct. 577, 66 L. Ed. 2d 475.

Frosburg v. State Dep't of Personnel, 37 Md. App. 18, 375 A. 2d 582 (1977).

Schaefer v. State, 31 Md. App. 437, 356 A. 2d 617 (1976)

Howards Sports Daily, Inc. v. Public Ser. Comm'n, 179 Md. 355, 18 A. 2d 210 (1941)

Bruce v. Director Dep't of Chesapeake Bay Affairs, 261 Md. 585, 276 A. 2d 200 (1971).

Pressman v. Barnes, 209 Md. 544 121 A. 2d 816.

Mason v. State, 12 Md. App. 655, 280 A. 2d 753.

Andersen v. State, 24 Md. App.128,331 A. 2d 78 (1975), aff'd, 427 U.S. 463, 96 S. Ct. 2737, 49 L. Ed. 2d 627 (1976).

Attorney Grievance Comm'n v. Dunphy, 297 Md. 377, 467 A. 2d 177 (1983).

Street v. State, 60 Md. App. 573, 483 A. 2d 1316 (1984).

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Corso v. Creighton University, 731 F 2d 529 (8th Cir. 1984).

Holiday Magic, Inc., v. Scott, 4III. App. 3d 962.

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Golding v. Salter. 234 Miss. 567 107 So. 2d 348 (1958).

Soglin v. Kauffman, C. A. Wis. 1969, 418 f 2d 163.

Housh v. Peth, 165 Ohio St. 35, 122 N.E. 2d 340 (1956).

Lugosi v. Universal Pictures. 603 P. 2d 425.

Cohen v. Illinois Institute of Technology, 524 F. 2d 818 (7th Cir. 1978).

Nashville Memorial Hospital., Inc. v. Binkley 534 S.W. 2d 318.

Bruno v. Civil Service Commission of Chicago, 38III. App. 2d 100,186 N.E. 2d 108.

Yarztoff v. Democrat-Heral Publishing Co., 281 Or. 651, 576 P. 2d 356 (1978).

Murphy v. Ramsey, Utah 1885, 5 S. Ct. 747, U.S. 15, 29 L.Ed. 47.

Whitfield v. Hanges, Iowa 1915. 22 F. 745, 138 C.C.A. 199.

Castaneda v. Pickard, C.A. Tex. 1981, 648 F. 2d 989.

LaFore v. Emblem Tape & Laber Co., D.C. 1978, 448 F. Supp. 824.

Brown v. Illinois, 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed. 2d 416.

Dunaway v. New York, 99 S. Ct. 2248, 60 L.Ed. 2d 824 (1979).

Sutton v. Hofeld 454 N.E. 2d 681 (III. App. 1 Dist. 1983).

Rauson v. Sears Roebuck & Co. DC - Colo. 585 F Supp. 1393.

Gotkin v. Miller (1974, DC NY) 379 F Supp. 859.

O'Brien v. O'Brien (485 N.Y.S.2d 548 (A.D. 2 Dept. 1985).

Contreras v. Crown Zellerbach Corp. Wash., 565 P2d 1173.

Local Number 93, International Assn. of Firefighters, AFL-CIO v. City of Cleveland, et al. 46 CCH S. Ct. Bull. P.

Allen v. Prince George's County, Md., CAMd.

737 F.2d 1301.

S T A T U E S

Title VII, of the Civil RIghts Act of 1964, 78 Stat. Act of 1964, 42 U.S.C. 2000e-2(a)(a).

45 CFR Part 80 - Nondiscrimination under programs receiving federal assistance trough the Dept. of Health and Human Services. Effectuation of Title VI of the Civil Rights Act of 1964.

29 CFR 1607.3 Discrimination Defined. Relationship Between Use of Selection Procedures and Discrimination.

29 CFR 1602.14 Preservation of records made or kept.

Fair Labor Standars Act of the United States code.

Sherman Antitrust Act.

42 U.S.C. 1981. Equal higts Under The Law.

42 U.S.C. 1983. Civil Action for Deprivation of Rights.

42 U.S.C. 1985. Conspiracy to interfere with civil rights

(1)Preventing officer from performing duties,

(2) Obstructing Justice; Intimidating party,

(3) Depriving ... of rights or privileges,

42 U.S.C. 1986. Action for neglect to prevent,

42 U.S.C. 1988. Proceedings in vindication of civil rights,

18 U.S.C. 1951. Interference with commerce by threats or violence.

Restatement (second) of Agency Sec. 213 (1958)

213. Principal Negligent or Reckless.

A person conducting an activity through servants or other agents is subjet to liability for harm resultingfrom his conduct if he is negligent or reckless:

(a) in giving improper or ambiguos orders or in failing to make proper regulations; or

(b) in the employment of improper persons or instrumentalities in work involving risk of harm to others;

(c) in the supervision of the activity; or

(d) In permitting, or failing to prevent, negligent or other tortious conduct by persons, whether ornot his servants or agents, upon

premises or with unstrumentalities under his control.

Ann. Code of Md. Health-Occupations Sec. 14-101 Physicians.

Ann. Code of Md. Health-Occupations Sec. 14-305 Qualifications of aplicants.

Ann, Code of Md. Health-Occupations Sec. 14-306 Alternative Education Qualification

(b)(5) - Citizen Graduates of Recognized Foreign Medical Schools.

Ann. Code Of Md. Health-Occupations Sec. 14-702 Misrepresentation as Practitioner of Medicine

Ann. Code of Md. Health-General Sec. 15-123 Fraud

Ann. Code of Md. Health-General Sec. 19-301 subtitle 3. Hospitals and Related Institutions 19-301 Definitions

(e) Hospital

Ann. Code of Md. State Goverment 10-625. Correction of Public Record.

Ann. Code of Md. State Goverment 10-626. Unlawful disclosure of personal records.

Ann. Code of Md. Art. 27, Sec. 27. Intimidating or corrupting jurors, etc., obstructing justice.

Ann. Code of Md. Art 27,Sec. 126. Embezzling Property and writings.

Ann. Code of Md. Art.27 Sec. 132. Fraudulent Misapropriation by Fiduciaries.

Ann. Code of Md. Art. 27 Sec. 337. Kidnapping.

Ann. Code of Md. Art. 27 Sec. 138A. Employment Benefits.

Ann. Code of Md. Art. 27, Sec. 342. Theft.

Ann. Code of Md. Art. 27, Sec. 562D. Extorsion by state or local officer or employee against another employee.

Ann. Code of Md. Art. 27, Sec. 563. Extorsion by false accusation.

Ann. Code of Md. Art. 398, Sec. 7 Fraudulent Conveyances.

Ann. Code of Md. Art. 498, Sec. 25 Intimidation etc., of persons exercising, etc., rights granted by Secs. 20, 21,22, or 23.

Ann. Code of Md. Art. 64A, MERIT SYSTEM.

Ann. Code of Md. Art. 95A Sec. 6 Unemployment

insurance Law 6. Disqualifications for Benefits (b) Gross Misconduct.

Ann. Code of Md. Art 95A. Sec. 17 Penalties 17. Unlawful Acts.

(b)False Statement to Prevent or Reduce Benefit.

Ann. Code of Md. Art. 100. 94. Payment of wages and salaries.

Code of Maryland Agency Regulations Section 10.07 .01 .01.

Title 10. Department of Health and Mental Hygiene. Subtitle 07 Hospitals. Chapter 01. Acute General Hospitals and special hospitals 01 Definitions.

Code of Fair Practices. Promulgated as COMAR 01. 01. 1976.05. Equal Opportunity Program in State Employment Chapter 03.

Code of Maryland Agency Regulations. Title 07. Departmet of Human Resources Subtitle 01 Office of the Secretary . Chapter 03. Nondiscrimination.

Medicine, Defined- By Medicine We Mean the repository of tested knowledge, skills, and experience constituting the science and art of the cure alleviation, and prevention of disease and injury. Medicine in this sense establishes the main sources for discovering and corroborating hypothesis about health and disease, which in turn form the basis for diagnosis, treatment, and prognosis.

Physician Defined- By physician we mean a professional fully trained to diagnose and treat illnesses and injury, to alleviate suffering, andto assist patients in keeping well and in safeguarding their best interests.

Profession Defined - A field of endeavour requiring specialized knowledge obtained by prolo gued and concentrated study - Knowledge much beyond what the average person can be expected to obtain.

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JURISDICTIONAL STATEMENT

RAFAEL M. MONTANO, M.D.,
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850 Sligo Ave., Suite 501
Silver Spring, Md. 20910

Pro se

JURISDICTIONAL STATEMENT

Rafael M. Montano, M.D., the appellant, appeals from the final judgment of the U.S. Court of Appeals for the fourth circuit, dated September 23, 1986, holding, in the reasoning of the U.S. District Court for the District of Marvland, that this action was "without merit."

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fourth Circuitappears in the appendix hereto, p. 1a, infra, unpublished, C/A No. 84-4608-JFM (D. Md., May 12 1986).

The opinion of the U.S. District Court for the District of MD., appears en the appendix hereto, p. 4a, infra, Memorandum and Order (Motz, J) dated May 9, Granting Motion of defendants for Summary Judgment; Judgment is entered in favor of defendants against Plaintiff (c/m 5/9/86) (E.O.D. 5/13/86) RMM.

(Pages 2, 3, 4 & 5, were deleted here, as requested by this Supreme Court's Assistant Clerk Loretta Ruffin, and in conformity with her instructions, these pages are now attached to the end of this booklet: SUPPLEMENTARY APPENDIX.)

JURISDICTION

The judgment of the U.S. Court of Appeals for the Fourth circuit, affirming the District Court Order, was entered on Sep. 23, 1986. Not motion for rehearing was entertained. FRAP 40, requires that a petition for rehearing be filed within 14 days after entry of judgment. Two months had elapsed before appellant was afforded the opportunity to learn of the U.S. Court of Appeals judgment. A supplementary notice of appeal to this Court was timely filled on Nov. 28,1986, in the U.S. Court of Appeals for the Fourth Circuit and in the U.S. Court of Appeals judgment.

CONSTITUTIONAL PROVISIONS AND LAWS

Amendment I, United States Contitution: Congress shall make no law ...abridging...the right of the people peaceably ...to petition the Goverment for redress of grievance.

Amendment IV, United States Constitution:The right of the people to be secure in their persons, houses, papers, and effects, against

unreasonable searches and seizures, shall not be violated, and no warrants shall issue, - but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized .

Amendment V, United States Constitution: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ..nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII, United States Constitution: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

Amendment VIII, United States Constitution: Excessive bail shall not be required, nor

excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendent XIII, United States Constitution: Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted , shall exist within the United States, or any place subject to their judisdiction.

Amendment XIV (Ratified July 9, 1868) U.S. Constitution: .. No State shall make or enforce any law which shall abridge the privileges or inmunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within itsjurisdiction the equal protection of the laws.

Merit Syste Laws (Ann. Code of Md. Art. 64A et seq). 33. Separation of employees.

(a) Kinds of Separation.- (1) An employee - may be permanently separated from the classified service through resignation, rejection.

on probation or removal, and may be tempora rily separated through layoff, suspension or leave of absence. (2) The Secretary of Personnel shall by rule prescribe what shall constitute resignation.

(b) Rejection during probationary period; removal for cause.- (1) (i) The apointing authority may at any time before the expiration of the probation period reject any person appointed to a position in his depart-- ment upon statement in writing to the Secretary of Personnel of the cause for rejection; the probation period shall be for a period not exceeding 90 days, except for position higher than the pay scale numbered 7 on January 1, 1967, in which positions the probation period shall be for a period not exceeding six months..(2) (i) No employee who has completed his probation may permanently removed from the classified service except for cause, upon written charges and after an - opportunity to be heard in his own defense.

(ii) Such charges may be filed by the appointing authority or by any citizen...and such charge shall within ninety days after filing, be heard, investigated and determined by the Secretary to hear, investigate and determine the same.

(iii) The Secretary of Personnel shall render his decision within 45 days after a hearing is held before him orhis authorized representative or within 45 days after all legal memoranda or briefs have been filed.

(c)Decision of Secretary final .- The finding and decision of the Secretary or such person or board when approved by the Secretary shall be final, and be certified to the appointing authority and shall be forthwith enforced by such authority.

(d) Cause for removal.- (1) The Secretary shall, by rule, prescribe what may constitute cause for removal, but no removal shall be allowed because of the religious or political opinions or afiliations of any employee.

(2) The provisions of this section shall apply to the demotion of an employee as described in (Sec) 31 of this article.

(e) Suspension; preliminary hearing.- (1) If an employee is suspended without pay pending a hearing on disposition of charges for removal, the appointing authority shall inform the employee in writing of the reasons for the suspension at the time of the notice of the notice of the suspension.

(2) Within 5 working days of the notice of suspension the employee may request in writing that the Secretary of Personnel conduct a preleminary hearing to determine whether or not the employee may continue to work with pay pending the disposition of the charges. This preliminary hearing is in addition to the hearing on the merits as provided in sub section (b) of this section.

(3) The Subject of the preliminary hearing shall be limited to the issues of whether or not suspension without pay is necessary to

protect the interests of the State or the employee pending final desposition of the - charges, and whether other employment and status alternatives should be considered.

At the preleminary hearing, the employee may:

(i) Rebut the reasons given for the suspension;

(ii) Allege mitigating circumstances; and

(iii) Offer alternatives to the suspension, including but not limited to:

1.-Return to the position with pay ; or

2.-Transfer to another position with pay;or

3.-Suspension with pay.

(4) The Secretary or his designee shall conduct a preliminary hearing within 5 working days after the Secretary receives in writing the request from the suspended employee for the preliminary hearing.

(5)At the discretion of the Secretary, the authority to conduct a preleminary hearing may be delegated to another member or board of the Department of Personnel.

(6) After the preliminary hearing es completed, the Secretary shall render a decision, in writing, within 5 working days. This decision shall be conclusive as to the issue of suspension only.

34. Answer to or hearing on report of unsatisfactorywork or conduct.

The Secretary of Personnel shall prescribe a form for reports by the appointing authority concerning any employee who has been separated from service or who has been transferred to some other State agency, voluntarily or involuntarily, because of alleged unsatisfactory work or conduct. In No case shall such report become part of such employee's official o permanent State employment record until after the Secretary has given the employee an oportunity to answer it in writing. When and if such an answer is filed, it shall become part of the official and permanent record of the employee, and the Secretary shall make use thereof in ruling

upon such employee's suitability for future employment in State service or elsewhere... NOTE: In Allen v. Prince George's County , Md., CAMd 737 F2d 1301, the Court stated "..Prince George's County has approximately 4000 employees,... The county charter requires that a merit system be used for all county employment practices. From 1973 on, the county's employment practices have also been subject to an Equal Employment Opportunity plan."

HOW THE FEDERAL QUESTION WAS RAISED

At the early stage of this action plaintiff's complaint stated that, as a result of defendants inhumanity to plaintiff, the latter henceforth, has had to endure: Slavery (theft of a year's work, theft of salary), extorsion, arrest of his professional life, antitrust actions, malicious prosecution, etc., in sum, plaintiff stated that he has been deprived of every human right ever since he entered in contractual agreement with his former employer, as if the Constitution and Laws of the United States, merely served a decorati-

ve and non-effective purpose (particularly when invoked by minorities).

The United States District Court for the District of Maryland found plaintiff's complaint "clearly frivolous," granted defendants' motion for summary judgment and entered judgment on their behalf.

The above constitutional claims were again reiterated by appelant before the United States Court of Appeals for the Fourth Circuit: In essence, plaintiff said that equal treatment under the law, also meant, equal treatment under the Merit System Law. If defendants, since the alleged ocurrence, have excluded plaintiff from it's provisions, then this law is unconstitutional. The U.S. Congres on Section 703(a)(1) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1), Outlawed segregation in these words:"It shall be an anlawful employment practice for an employer...to fail o refuse to hire or to discharge any individual, or otherwise to discriminate against

any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin..." Plaintiff also pointed out to the Appeals Court, that summary judgment, as applied in this case, was inconstitutional for repugnancy to the jury trial provisions of the United States Contitution, since plaintiff's trial was mysteriously cancelled and postponed indefinitely, allowing for a later move by defendants for summary judgment which predictably was granted on their favor.Plaintiff put it in these words in his BRIEF OF APPELANT:

ARGUMENT VIII.-Summary judgment was improperly ordered on behalf of defendants because:
a) Plaintiff's right to a jury trial had been inexplicably denied 5 months earlier in these United States District Court Proceedings.
b) FRCivP, particularly discovery proceedings,
c) At issue is the practice of human rights abuses.

The U.S. Court of Appeals for the Fourth Circuit found plaintiff's appeal "without merit." It thus considered and expressly rejected these federal constitutional claims.

STATEMENT OF THE CASE

Because the question before this Court involves the refusal of the lower courts to uphold the Constitutional guarantees (Amendments IV, V, VII, VIII, XIII and XIV), appellant shall set forth only thoseportions of the case which are repugnant to human dignity and to the Constitution of the Unitd States.

The appellant, Rafael M. Montano, M.D., in 1978, received a full and unrestricted license to practice medicine by the Federal Government of Mexico, with full endorsement by the United States Embassy in Mexico City. Plaintiff is a legal resident of the U. S. and has been duly certified by the educational Commission for Foreign Medical Graduates (E.C.F.M.G.), also, he was one of the few medical residentes at appellee hospital who had successfully passed the Federation Licen

sing examination (FLEX) , given by the Federation of American Medical Examiners to qualify for licensure as a physician anywhere in the U.S.. Additionally, appellant was the holder of the highest score (81) in the E.C. F.M.G. exam in the entire appellee hospital, and the honor of having been associate professor of surgical Pathology and member of the clinical faculty of the medical school at the Autonomous University of Guadalajara. On July, 1982, Appellant was hired by defendants to begin his first residency year at the second graduate level in the Family Practice Residency Training Program. Never was appellant actually granted second graduate level position by appellees, in fact, appellees assigned the maximun number of on call days to him and double coverage of two departments simultaneously during the month of July 1982. Indeed, None of the other second graduate level residents were scheduled to be on first-call at all that month.

On August 1982, appellant, once again, was

assigned the maximun number of on-call days and double coverage of another two departments at appellee hospital. On Sep. 1982, appellant was assigned to the Family Practice in-patient (hospitalized) service. He unrelentigly performed his houseofficer duties in conformance with the "PRINCIPLES OF MEDICAL ETHICS" (see exhibit # 16);[12] urging correction of diagnostic and therapeutic errors to avoid hospital complications and wrongful deaths.

12.-AMERICAN MEDICAL ASSOCIATION PRINCIPLES OF MEDICAL ETHICS (1980)

I.- A physician shall be dedicated to providing competent medical service with compassion and respect for human dignity.

II.-A physician shall deal honestly with patients and coleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.

VII.- A physician shall recognize a responsability to participate in activities contributing to an improved community.

Appelles responded by sending a demotion/probation letter to appellant. Tragically, seveveral patients died. By mid-oct. 1982, Dr. Avery, coordinator of the Family Practice Program, said to appellant: "Remember 'that letter' (demotion/probation letter) we sent you? it does not mean anything. I got rid of Spealman who was it's chief author." On Nov. 12, 1982, while working at a first graduate level appellant was assigned to take the Family Practice in-service exam as if appellant were at a second graduate level. On addition, appellant was not allowed to take the night-off before the examen as permitted to other (caucasian) residents.[13]

On December 27, 1982, appellant recived his 2nd-year contract for academic year 1983-84. On April 1983, Dr. Avery, Family practice Program Coordinator, assigned appellant to a

13. Appellant, in this exam scored at a third graduate level. Those caucasians residents who were allowed to stay in the program, and were later promoted, did not even scored at acceptable first graduate level.

medical rotation categorical for second graduate level (house-officer in the out-patient clinic), inspite of appellant's pointing out to Dr. Avery that appellant should have rotated through the CCU (coronary care unit) department. It was then when Dr. Avery reviewed appellant's file to check on his rotations and said, "There is nothing in your file. Tell me what rotations have you already served," and said to her secretary, "there are not evaluations on Montano's file. We should get them." Dr. Robert Miles, chief resident, agreed to give appellant vacation for the birth of his first-born, from June 1, until June 9, 1983. On June 1, 1983, appellant presented to appellee hospital to check on his "on-call" schedule for that month. He found his vacation inexplicable shortened by 3 days and was also scheduled (without notice) to be "on-call" June 9 (his last day of vacation). On June 7, 1983, Appelant delivered his first-born at appellee hospital

On June 8, 1983, appellant was extorsioned to resign his position as a 2nd. year resident for academic year 1983-84. On June 13 1983, appellant was terminated without notice. (Unknowingly appellant continued working as usual). On June 16, 1983, appelles ordered appellant's arrest on fabricated grounds, falsely accusing appellant of not being a "doctor" and charged him of theft of his $18,000.00 a-year salary. Never an appellee hospital's patient died while under appellant's care or suffered as a result of his poor judgment, lack of medical knowledge, lack of clinical skill & techniques, or lack of medical experience on appellant's part, (or as appellants have put it: "poor performance," "substandard performance". Appelant, devoted in a disciplined, reliable and humane manner to those under his care, faithfully fulfilled his professional duties particularly his moral obligations in patient care. antagonizing undue influences from supervisory employees arising

from self conceit, indolence, and mercenary considerations toward hospital administrators. On July 7, 1983, defendant hospital received a letter from the State of California, Board of Medical Quality Assurance, Dept. Of Consumer Affairs which is the accrediting agency to the Accreditation Council of Graduate Medical Education) stating that plaintiff was eligible for licensure:

Les S. Alt, Administrative Assistant
Prince George's General Hopital and Medical center
Hospital Drive
Cheverly, MD 20785

Gentleman:

Dr. Rafael Montano sat for FLEX in California June 1981 and obtained a weighted average of 77% . No license has been issued as the remainder of our licensing requirements have not been completed.

Sincerely,

MARC E. GRIMM, Program Manager
DIVISION OF LICENSING & ADMINISTRATION

On August 19, 1983, Ms Joy Churchill, American Vice Consul from the CONSULATE GENERAL OF THE UNITD STATES OF AMERICA, In Guadalajara, Mexico, provided documentation (to Mr. Steven Orenstein, Esq., prosecutor in State of Md, v. Rafael M. Montano CR 941902) addressing both issues: a) That plaintiff had fulfilled the educational requirements to practice medicine in Mexico where he had his medical education, and b) That plaintiff had obtained an unrestricted license and certificate of full registration to practice medicine.

The Educational Commission for Foreign Medical Graduates (ECFMG), also provided documentation to defendant hospital that, as a foreign medical graduate: a) Plaintiff's qualifications had been evaluated for entry into the graduate medical education and health care systems in the U.S., and that b)Plaintiff was qualified to continue his medical training in this country by having met the commi-

ssion's specific educational requirements. On October 11, 1983 appellant presented at Prince George's County General District Court. Charges against appellant were found to be false and Hon. Joseph Casula dismissed the case. On January 8. 1984, appellant, unable to find a job, filed for unemployment benefits with the Dept. of Human Resources of Md. On February 7, 1984, appellant received a letter from the State of Maryland, Dept. of Human Resources. Employment Security Administration. ISSUE GROSS MISCONDUCT - SECTION 6 (b)

FINDINGS OF FACT.- The claimant was discharged, or suspended as a disciplinary measure by the employer, Hospital Comm. of Pr. George's County on 6/30/83 because of working as a hospital doctor with improper credentials, falsified letters of recomendation. Clmt. presently seeking work as medical technician.

DETERMINATION GROSS MISCONDUCT.- The claimant's conduct was a deliberate and willful disregard of the standarts of behavior which the emplo-

yer has a right to expect, showing a gross indiference to the employer's interests. (see exhibit 14 page No. 13)

On March 18, 1984, in a letter to L.A. County USC-Medical Center, Mr. Raleigh Cline, Chief Executive Officer, wrote: "...This letter is transmited in response to your correspondence of Feb. 14, 1984 to Mr. Les Alt, Asistant Administrator, requesting reference information on Rafael Montano, who has applied to your institution to work as a volunteer. Dr. Montano was granted a second year residency position in Family Practice at Prince George's General Hospital and Medical Center on July 1, 1982. His acceptance as a second year resident was in part - based upon his representation of having -- successfully completed a first year residency position at Martin Luther King, Jr. General Hospital, Los Angeles, California. We were subsecuently advised though an official of Martin Luther King Hospital that such - residency was not in fact

served. Prior to this disclosure Rafael Montano was demoted to a first year resident status in our Family Practice Program because of substandard performance. On the basis of his continued poor performance, it was recommended by our Director of Family Practice, Dr. Janet Avery, that his contract not be extended beyod June 30, 1983. However, on June 13, 1983 we accepted Rafael Montano resignation. Therefore, he did not complete a full year of residency a this hospital. If you requiere further information please do not hesitate to contact me at 301-341-2100.

Sincerely yours,

Raleigh Cline
Chief Executive Officer

(See exhibit 14. Page No. 14).

On March 22, 1984, appellant filed a Civil Rights violation & employment discrimination complaint. On Sept. 28, 1984, The equal Employment Opportunity Commission gave plaintiff a right to-sue letter. On Dec. 26,1984 plaintiff filed a Civil Rights Violation &

employment discrimination suit (Civil Action No. Y-84-4608) Against Hospital Commission of Prince George's County Md., et al., under title VI & VII; 42 U.S.C. Sec. 2000e-5; 42 U.S.C. 1981; 42 U.S.C. 1983; 42 U.S.C. 1985 (3); 42 U.S.C. 1986; In the United States District Court For the District of Maryland. In contempt of ethical principles of justice and equal treatment all agencies from the Executive Branch of Government (E.E.O.C. Dept of H.H.S., The prince George's County HUMAN RELATION COMMISSION, The State of Md., Dept. of Human Resources, Employment Security Administration) dismissed appellant's complaint.

On March 27, 1985, The United States District Court for the District of Maryland ORDERED the schedule of dates stating: "....4.-Jury trial es schedule for the week of 12/2/85, and is estimated to requiere two days. "... The dates herein shall become final and binding upon all parties unless exception

thereto is taken within seven days of this date." (See: SCHEDULING ORDER (Young, J.) (c/m Chambers) (E.O.D 4-1-85 bbb).

On May 4, 1985, Plaintiff responded to Interrogatories 1 & 2 propounded upon him by defendant Raleigh Cline as follows:

Q. State your full name, date or birth, present home address, and social security number.

A. (a) Rafael Montano Maciel (b) November 27, 1950 (c) Mexico (d) 1136 S. Alvarado St. Apt. #5 L.A. CA. 90006.

Q. If your are a lawful resident of the United States , state the date upon which you first entered the United States, the date upon which you were granted permanent resident alien status, yourfederal identification number, and the date upon which you became a U.S. citizen , if any.

A. (a) Summer of 1968 (b) October 17, 1970 (c) A 30 048 439 (d) February 1, 1979, filed declaration of intention to become a citizen of the U.S.

On May 8, 1985 (4 days later), the I.N.S., acting upon a complaint, entered (without cause) an ORDER OF DEPORTATION on appellant's wife, whereby arrangements had already been for her departure to MEXICO on May 31,1985, signed Mr. Ernest E. Gustafson, I.N.S., District Director in Los Angeles (former District Director in Baltimore, Md.).

On Dec. 2, 1985 inexplicably, appellant's right to a jury trial was denied.

On Dec. 17, 1985 the U.S. District Court for the District of Maryland, entered a supplemental scheduling order as follows:

6. The trial - which is to be tried/jury and is expected to last 2 - 7 days - will commence during the week period bebinning on Sep. 29, 1986.

7. A supplemental scheduling conference, if necessary, will be held between 2:30 and 3:30 pm on Oct. 3, 1986.

8. Motion deadline March 14, 1986.

On Dec. 17, 1985, (at the same time of the

scheduling conference) The Court, with appellee's consent, transformed Rule 34 activities (to have appellee hospital business records examined by appellant), from an extrajudicial status to a more expensive, time consuming court proceeding.

On Feb. 10, 1986, appellees, by and through their counsel, once again, deprived appellant of his right to discovery (appellant wasn't even allowed to see his own file), threatened him with the use of physical force if appellant did'nt leave the hospital premises at once.

On March 17, 1986, (3 days after deadline) appellees docketted their motion for summary judgment.

On May 12, 1986, Memorandun an Order (Motz,J) dated May 9, 1986 granting Motion of Defendants for Summary Judgment; Judgment is entered in favor of appellees against appellant (c/m/ 5/9/86) (E.O.D. 5/13/86) RMM.

On May 19, 1986, Notice of Appeal of Plaintiff

(c/m 6-2-86) There is a proceeding, in the civil docket sheet, dated Dec. 23, nr. 33, entitled AMENDED COMPLAINT (c/s), which - appellant does not have any Knowledge, and demands a full explanation of this action.

THE QUESTION ES SUBSTANTIAL

The question as to the Fith Amendment implications of the widespread practice of employment abusive discharges by supervisory employees has not been authoritatively addressed. Since the Fith Amendment does not contain an equal protection clause (as does the - Fourteenth Amendment which applies to the states), supervisory employees have found in this legislative gap a new an useful extortion tool called: "Substandard performance, poor performance evaluation."

The following employment practices illustrate the plundering of valuable property interests in favor of third parties in the workplace: On Nov. 27, 1978, tragedy struck the city of San Francisco when Mayor George

Moscone, and his close friend supervisor Harvey Milk were assassinated. They were - shot to death by Dan White, a former member of the board of Supervisors, who shortly before, had been subtly extorsioned to resign his post, as Supervisor, in favor of a third party (more simpathetic to the Gay Cause).

On July 18, 1984, again, tragedy struck San Ysidro, a Mexican-American neighborhood, only one mile north of the Mexican border and 15 miles south of San Diego, when Oliver - Huberty, law-abiding-citizen, mercilessly executed 21 people and wounded 19 more at a local McDonald's at 522 San Ysidro Blvd., a few days after being laid off from his job without apparent justifiable cause.

On August 20, 1986, tragedy struck this time of Edmond, Okla., When Patrick H. Sherrill, ex-communications & electronics technician, expert marksmen, former weapons instructor with his military reserve unit, with no police record, working at a local post office,

slayed 14 co-workers and wounded 6 others before killing himself after being told that he would be terminated because of "poor performance."

If the question as to the Fith Amendment implications of abusive employment discharges by supervisory employees is not substantial, because such extortion tool (formely called 'communism') "substandard performance, poor perfomance evaluation" does not exist, then employees must yield to middle managers pressure to get a certain degree of "performance" regardless of their professional judgment, civil and moral obligations for the welfare and safety of others:

On January 28, 1986, tragedy struck the National Aeronautics and Space Administration (NASA), when after 25 exuberant years of space exploration during which men landed on the moon and unmanned vehicles hurtled into even deeper space, the shuttle Challenger exploded, killing six astronauts and teacher

Christa McAuliffe. For the moment, America too, seemed to have lost its nerve and its vision from the top down.

Why America's 56th manned mission into space failed? Much of the physical evidence, as cause of the disaster, pointed to the failure of the synthetic rubber O-rings which keep hot gases inside the solid-rocket-boosters. But more troubling is the question of whether NASA engineers' safety warnings were so weak ('just to cover myself' to remain on the job), that supervisory employees simply chose to ignore them, or whether NASA engineers did indeed meet their professional, civil and moral obligations to their fellow workers' lives, is a cuestion that can only be answered by their own conscience. But -- whichever it is, a new shattle would cost - $2 billion dollars and take nearly four years to complete.The sole recovery of their fe-- low-workers' remains from the ocean floor - cost some $20 million dollars. This alone,

seems to be very substancial.

Government documents released on early Feb. cited safety violations and personnel problems at both the solid-rocket assembly - plant, Morton Thiokol of Utah, and at shuttle maintenance facilities run by the Lockheed Space Operations Co. At the same time, William McCarty, manager of safety analysis at NASA, said, "I do not dispute (NASA's) general safety assessment methods are less thorough than the best available."

For months after the tragedy, Challenger pilot's wife, Jane Smith had refused public comment on how she felt about the mistakes that led to the Space Shuttle Challenger disaster, which killed her husband, Navy Commander Michel Smith, and six other astronauts. Only after release of the harsh conclusions of the Rogers commission did she criticize the "incredible terrible judgments, shockinglysparce concern for human life...and some very bewildering thought processes" by NASA officials.

On july 1986, Mrs. Smith's feelings became even clearer. It was learned that she had filed a suit seeking $15.1 million from the -- space agency, specifically naming Lawrence Mulloy, who was then chief of the faulty solid-rocket-booster program. Mulloy, 52, a 26-year NASA veteran had been criticized in the probe of the Challenger accident for pressing ahead with the launch despite engineers' safety warnings.

Also, William Lucas, director of NASA's Marshall Space Flight Center in Huntsville, -- Ala., became the highest-ranking NASA official to leave the organization as a result of the Challenger tragedy. Several witnesses before the comission, chaired by William - Rogers, a former secretary of state, testified that Lucas had known that some engineers had objected to the Chalenger launch because those rockets were considered too dangerous. The reason: once inited, they cannot be shut off. James Scheuer, a member of

the House Committe that oversees NASA, said that Luca's early retirement was appropriate. Declared Scheuer: "When there is a real foul-up, the top guy tenders his resigna---tion." (MACLEAN'S Je. 16, '86).

The apprehesion of all employees of being - tagged with the illfated label of "poor performance, substandard performance," has also spread troughout corporate America as well. As business superstructures become wildly - complex, and corporations get larger and larger, there tends to be a breakdown in the - lines of accountability. During the past few months the news has been filled with tales of business schemes and scandals, of corporate intrigue and down right crime. The -- offenses make up a catalog of chicanery: - cheating on Government defense contracts,- check-writing fraud, bogus-securities dealing, tax dodges, insider trading, illegal use of "junk bonds" to finance corporate - takeovers, money laundering, etc. Business

Management experts doubt that greed is the full explanation why supervisory staff have run afoul of the law. They point out that middle-level executives in many companies are under stress to make their employees meet earnings targets. Says John Fleming, a professor at the University of Southern California Graduate School of Business Administration; "For middle, managers there is so much pressure to get a certain degree of performance that they sometimes feel they almost have to do somenthing illegal to have their employees meet the goals set by upper management."

It's increasingly clear that existing law doesn't deal with the subtle organizational pressures that are the root causes of corporate crime. Performance-based pay schemes, example, can encourage illegal conduct, and decentralized corporate structures frecuently make it difficult to find someone to blame.

Robert W. Ogren, head of the Justice Dept's Criminal Fraud Unit estimates that price-fixing, consumer and defense-procurement contract fraud, and similar crimes may cost the public hundres of billions of dollars.

On June, 27, 1985, five accounting groups - concluded that companies are duping inves-- tors often enough to have warranted the formation of a Private National Commission on Management Fraud.

Murder. "Indiference to life." Before the cancer of cynicism had taken over corporations in America, rarely had company officials been held criminally liable for job-related health problems, but in an unprecedented verdict on June 19, 1985, Cook County Judge Ronald J.P. Banks found three company executives of Film Recovery Systems Inc., guilty of murder in the death of a worker resulting from unsafe plant conditions. The Film Recovery case is one of several being closely monitored by lawyers, companies, and unions. These cases

are the testing ground for " an attempt to apply criminal laws to corporate behavior," said Shepard Goldfein, a New York attorney representating an Ocean County (N.Y.) theme park accused of aggravated manslaughter. "It's unprecedented." Goldfein's clients, Great Adventure Inc. and it's parent, Six Flags Corp., were formally accused of "extreme indifference to human life " following the deaths, in 1984, of eight teenagers in a fire at the park's Haunted Castle. The Stated cited alleged shortcuts on safety, including failure to install sprinklers and alarms despite the advise of engineers. There are, however, many laws written to govern laborers' behavior in the workplace. - For example: Ann. Code of Md. Sec. 95A, 6, provides:

(b) Gross misconduct.-... For the purposes of this article, the term "gross misconduct" shall include conduct of an employee which is

(1) a deliberate and willful disregard of standars of behavior, which his employer has a right to expect, showing a gross indifference to theemployer's interest, or

(2) a serie of repeated violations of employment rules proving that the employee has regularly and wantonly disregarded his obligations.

But there are no statute proscribing misconduct in office by supervisory employees. Although misconduct in office may take one of three forms:

(1) malfeasance, (2) misfeasance, or (3)nonfeasance , it may only be commited by public officer or public officials. It has no application to private industry or business, and es very rarely enforced, if at all, as a misdemeanor.

As a result, premiuns on insurance for officers and directors last year rose 50% to --500%. Many corporations are having trouble retaining responsible and experienced direc-

tors.

Bus and trucking companies "are having severe difficulties obtaining the insurance required by federal law."

Nurses, midwives, obstetricians, gynecologists, pediatricians, dentists, and many other medical specialists are finding it almost impossible to obtain malpractice insurance at any price. St. Paul's Insurance Co., the largest medical malpractice insurer, has ceased writing new policies.

Municipalities, both large and small, are in deep trouble. Some cities have decided to "go bare" - that is, to take a chance that they can insure themselves against awards of heavy damages.

Premiuns for transportation companies in the last year have soared. In Los Angeles, the transit district's premiun leaped from -- $67.000 to $1.7 million, while coverage was reduced.

Outrageous? yes. Ridiculous? In many cases.

Unreasonably? Certainly and yet the examples represent just a small sampling from a rising flood of problems growing out of cynical -- professionalism.

With this distruful philosophy in mind, any kind of business, profession or goverment - agency es likely to become the target of a suit alleging malpractice or negligence resulting in personal injury.

There is a definite rise in the number and size of liability suits facing every type of company, from soccer-ball makers to cigarette manufacturers. From 1977 to 1981, the number of civil lawsuits in state courts grew four times as fast as the population of the U.S.. And the decade between 1974 and 1984, the number of product-liability suits en federal courts expanded 680%. The first million dolar verdict did not occur until 1962, but there were 401 in 1984, according to Jury Verdict Research Inc., a private group. The average verdict in produc-liability cases

now top $1 million; preliminary figures for 1985 indicate that the average verdict in medical malpractice cases also exceeded $1 million for the first time. Insurers and some of their customers blame aggressive lawyers, inventive judges and soft-hearted juries for twisting legal concepts of negligence into novel shapes to justify excessive damage awards to people who claim personal injury.

Appellant thus, proposes a thorough enforcement of professional codes of ethical an moral behaviour in all phases of Corporate America.The words "ethics" and "morality" in the English language are not confined either to abstract philosophical contexts or to narrow professional codes of conduct. The word "morality" denotes a social institution,composed of a set of rules that are generally acknowledged by its members. The overall purpose or object of our institutions or morality es the following: mora-

litiy ameliorates the tendency for things to go wrong o badly in interpersonal human relationshisps. Conditions can seriously detoriorate in human affairs as a result of limited resources, limited time, limited information, and, most important, limited simpathies. Given these pervasive features of the human condition, moral guides are needed in a culture to counter the limited human sympathies that can lead to unfortunate and even tragic situations, especially if self-interest becomes dominant (and driven by instict : agression) in human relationships.

C O N C L U S I O N

This is an unfortunate case, in today's climate, that had it's beginnings in cynicism and in contempt of the time honored and nobel profession: Medicine.

Appellant, who is a physician, should not have his image tarnished by the sorry characters, who favoring their "ego interests," turned the Hippocratic Oath into a hypocritic oath.

The essence of medical ethics is not some obscure, mystical body of knowledge. Rather, it is an appretiation of the role played by our own values, in our professional relationships with the public, patients, students and colleagues. Ethics illuminates the choices we have, and the value system we draw upon in making these choices.

First, this unwanted type of professionalism represents a threat to the public safety and welfare in all areas of science and technology; second,there is an accompanying danger

that if the Courts an authorities do not deal with theses social an attitudinal problems effectively, corporations, intitutions, hospitals, physician, etc., will lose the public's trust and confidence.

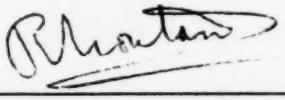
Appellant, as most of appellees, have had an invaluable opportunity to serve in one of the greatest of professions: Medicine. Now, as per Hippocrates, ours is the responsability to leave an even greater legacy of service than the one we inherited. Our legacy to the people shall be the kind of medicine that assures them of better health and longer life for their todays and for their tomorrows as well. We must remember that it is people we serve, and nothing shall take precedence over the quality and availabity of that care, including our "dear ego interest," the bottom lines or the balance sheets. We must - think of professionalism and all it entails in human -not abstract- terms.

It is not to be forgotten that the desire

to care for people, as well as their ailments, is why appellant and appellees decided to become doctors in the first place. What is needed now is for practicing physicians and the medical plrofession to resurect the human and carting aspects of their calling, bring them to the fore, and make medical science and thechnology, and the social, economic and political forces that are so evident today, their servants in this cause and not let them be the masters. This can and should now become a personal commitment of every physician and an organizational commitment of the profession. It may well be that the power inherent in the caring function can serve physicians as well now as it has in the past. After all, the real and ultimate social, economic and political power in this nation still lies in the hands of the people -people who nearly all will somehow have their lives affected by physicians.

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted, December 15, 1986.



Rafael M. Montano, M.D.

Pro se

Rafael M. Montano, M. D.

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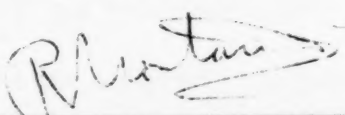
Silver Spring, MD. 20910

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this fifteen day of December, 1986, a copy of the foregoing APPEAL TO THE U.S. SUPREME COURT, was mail by certified mail, return receipt, to Sherrie L. Krauser, Associate County Attorney. Room 5104. County Administration Building. Upper Marlboro, Maryland. 20772



Rafael M. Montano, M.D.

APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 86-2067

Rafael M. Montano, M.D.,

Plaintiff - Appellant,

versus

Hospital Commission of Prince George's County, Maryland; and Benjamin Pecson, M.D., Chairman, Board of Directors; and Raleigh Cline, Chief Executive Officer; and Haluk Boneval, M.D., President of Medical Staff; and William B. Hagan, M.D., Acting Director of Medical Education; and Les S. Alt, Administrative Assistant; and Frederick Wilhelm, M.D.; and Department of Family Practice: Assistant Program coordinator, Janet Avery, M.D.; and Department of Family Practice, Assistant Program Coordinator, Samuel Alleyne, M.D.; and Mr. DeGeorge, Corporate Attorney for PGGH and Department of Security Chief, Albert Kulle.

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore, J. Frederick Motz, District Judge. (C/A No. 84-4608-JFM)

Submitted: July 18, 1986

Decided: September 23, 1986

Before WIDENER, SPROUSE and CHAPMAN, Circuit Judges.

(Rafael M. Montano, Appellant Pro Se. Sherrie L. Krauser, Thomas P. Smith, for Appellees.)

PER CURIAM:

A review of the record and the district court's opinion discloses that this appeal from that Court's order granting summary judgment to defendants is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. Montano v. Hospital Commission of Prince George's County, C/A No. 84-4608-JFM (D.Md., May 12, 1986).

AFFIRMED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

RAFAEL M. MONTANO, M.D. *

V. * Civil No.

PRINCE GEORGE'S COUNTY, * JFM-84-4608

MARYLAND, ET AL. *

****

MEMORANDUM

This is a pro se action in which plaintiff alleges that he was wrongfully fired as a medical resident because of his Mexican origin. Defendants have moved for summary judgment. The Action is clearly frivolous and defendants' motion will be granted.

As a threshold matter, it clearly appears that plaintiff has not made a prima facie showing that he was racially discriminated against. As a dark-skinned caucasian, the racial class to which he may belong seems to be all Hispanics, Indians and native Americans which in certain circumstances,

can be considered "non-white." See, e.g., Gonzalez v. Stanford Applied Engineering, Inc., 597 F .2d 1298, 1300 (9th Cir. 1979); Carrillo v. Illinois Bell Tel Co., 538 F. Supp. 793, 796-97 (N.D. ILL. 1982); Martinez v. Hazelton Research Animals, Inc., 430 F. Supp. 186, 187-88 (D. Md. 1977). Defendant, Prince George's General Hospital, hired twelve resident physicians in its Family Practice in 1982-1983, and three of the residents, excluding plaintiff, fell within this protected class. Of the three residents hired for the second year in 1983-1984, one fell within this class. Dr. Montano contends that he should have been included in this latter group. These hiring statistics do not give rise to any inference of discrimination in termination. In any event, the record unequivocally establishes that defendant's discharge of plaintiff was justifiable. When plaintiff

applied for a resicency appointment with defendant, he submitted fabricated reference letters and FLEX examination scores. As he later admitted to representatives of defendant, he falsified his credentials and did not advise defendant in his application that he had been academically dismissed from medical school and was not licensed to practice medicine in Mexico. During the year that he was with defendant (before defendant learned of the falsifications), plaintiff's work had been avaluated as unsatisfactory and he had been placed on academic probation. These facts clearly justified his discharge. Indeed, if the defendant hospital had not discharged him, it would have been professionally irresponsible.

A separate order granting defendants' motion for summary judgment and entering judgment on their behalf is being entered herewith.

Date: May 9, 1986

J. Frederick Motz
United States District Judge.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

RAFAEL M. MONTANO, M.D. *

V. * Civil No.

PRINCE GEORGE'S COUNTY, * JFM-84-4608

MARYLAND, ET AL. *

****

ORDER

For the reasons stated in the memorandum entered herein, it is this 9th day of May 1986

ORDERED that defendants' motion for summary judgment is granted and hat judgment is entered in favor of defendants against plaintiff

J. Frederick Motz

United States District Judge

RAFAEL M. MONTANO, M.D.,
Appellant

vs.

HOSPITAL COMMISSION OF PRINCE GEORGE'S COUNTY MARYLAND, et al.
Appellees

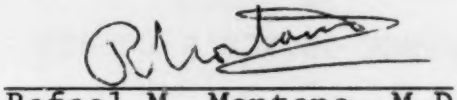
IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.
September Term, 1986.
No. 86-2067

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Rafael M. Montano, M.D., Pro se, plaintiff/appellant above named, pursuant to I.O.P. -41.3, 28 U.S.C. 1254(2), and Rule 10 of the Supreme Court, hereby appeals to the United States Supreme Court from the judgment given against plaintiff/appellant on September 23, 1986, by the U.S. Court of Appeals for the Fourth Circuit (before WIDENER, SPROUSE and CHAPMAN, Circuit Judges) affirming the granting of defendants' motion for summary judgment entered in this

action on the ninth day of May, 1986, by the United Stated District Court for the District of Maryland, signed by Hon. J. Fredrick Motz.

Respectfully submitted, November 28, 1986



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Pro se

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850 Sligo AVe., Suite
501. Silver Spring,
Maryland. 20910

IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF MARYLAND

RAFAEL M. MONTANO, M.D., Plaintiff	
vs.	Civil Action
PRINCE GEORGE'S COUNTY MARYLAND, et al.	No. JFM-84-4608
Defendants	

NOTICE OF APPEAL

TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Rafael M. Montano, M.D., Pro se, plaintiff above named, pursuant to 28 U.S.C. 1257(2), and Rule 10 of the U.S. Supreme Court, hereby appeals to the United States Supreme Court from the judgment given against plaintiff on September 23, 1986, by the U.S. Court of Appeals for the Fourth Circuit (before WIDENER, SPROUSE and CHAPMAN, circuit Judges) affirming the granting of defendants' motion for summary judgment entered in this

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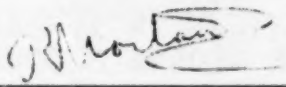
Respectfully submitted, November 28, 1986.



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Pro se

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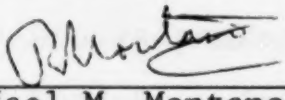
Silver Spring, Md. 20910

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this twenty eight day of November 1986, a copy of the foregoing NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT was mailed to sherrie L. Krauser Associate County Attorney. Room 5104. County Administration Bldg. Upper Marlboro, Md. 20772

Respectfully submitted. November 28, 1986.



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20910

American Medical Association

Principles of Medical Ethics (1980)

Preamble

The medical profession has long subscribed to a body of ethical statements developed primarily for the benefit of the patient. As amember of this profession, a physician must recognize responsiblity not only to patients but also to society, to other health professionals, and to self. The following Principles adopted by the American Medical Association are not laws, but standards of conduct which define the essentials of honorable behavior for the physician.

Principles

I.A physician shall be dedicated to providing competent service with compassion and respect for human dignity.

II. A physician shall deal honestly with patients and colleagues, and strive to expose those physicians deficient in character or competence, or who engage in fraud or deception.

III. A physician shall respect the law and also recognize a responsability to seek changes in those requirements which are contrary to the best interest of the patient.

IV. A physician shall respect the rights of patients, of collegues, and of other health professionals, and shall safeguard patient confidences within the constraints of the law.

V. A physician shall continue to study, apply and advance scientific knowledge, make relevant information available to patients, colleges, and the public, obtain consultation and use the talents of other health professionals when indicated.

VI. A physician shall, in the provision of apropriate patient care, excep in emergencies, be free to choose whom to serve, with whom to associate,and the environment in which to provide medical services.

VII A physician shall recognize a responsability to participate in activities contributing to an improved commnunity.

THE HIPPOCRATIC OATH

The methods and details of medical practice change with the passage of time and the advance of knowledge. However, many fundamental principles of professional behaviour have remained unaltered through the recorded history of medicine. The Hippocratic Oath was probably written in the 5th century BC and was intended to be affirmed by each doctor on entry to the medical profession. In translation it reads as follows:

I swear by Apollo the physician, and Aesculapius and health, and All-heal, and all the gods and goddesses, the according to my ability and judgment, I will keep this Oath and this stipulation-to reckon him who taught me this Art equally dear to me as my parents, to share my substance with him, and relieve his necessities if required; to look upon his offspring in the same footing as my own brothers, and to teach them this Art, if

they shall wish to learn it, without fee or stipulation; and that by precept, lecture and every other mode o instruction,I will impart a knowledge of the Art to my own sons, and those of my teachers, and to disciples bound by stipulation and oath according to the law of medicine, but to none other . I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like maner I will not give to a woman a pessary to produce abortion. With purity and with holiness I will pass my life and practise my Art. I will not cut persons labouring under the stone, but will leave this to be done by men who are practitioners of this work. Into whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from every voluntary act of mischief and corruption;

and, further, from the seduction of females, or males, or freemen or slaves. Whatever, in connection with my professional practice, or nor in connection with it, I see or hear,in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret. While I continue to keep this Oath unviolated, may it be granted to me to enjoy life and the practice of the the Art, respected by all men, in all times. But should I trepass and violate this Oath, may the reverse be my lot.

The World Medical Association
International Code of Medical Ethics

One of the first acts of the World Medical Association, when formed in 1947, was to produce a modern restatement of the Hippocratic Oath, known as the Declaration of Geneva, and to base upon it an International Code of Medical Ethics which applies both in times of peace and war. The Declaration of Geneva, as amended by the 22nd World Medical Assembly,

Sydney, Australia, in August 1968 and the 35th World Medical Assembly, Venice, Italy, in October 1983, reads:

At the time of being admitted as a Member of the Medical profession:

I Solemnly pledge myself to consecrate my life to the service of humanity;

I will give to my teachers the respect and gratitude which is their due;

I will practise my profession with conscience and dignity;

The health of my patient will be my first consideration;

I will respect the secrets which are confided in me, even after the patient has died;

I will maintain by all the means in my power, the honour and the noble traditions of the medical profession;

My colleagues will be my brothes;

I will not permit considerations of religion, nationality, race, party politcs or social standing to intervene between my duty and my patients;

I will maintain the utmost respect for human life from its beginning even under threat and I will not use my medical knowledge contrary to the laws of humanity;

I make these promises solemnly, freely and upon my honour.

The English text of the International Code of Medical Ethics is as follows:

Duties of physicians in general

A PHYSICIAN SHALL always maintain the highest standards of professional conduct.

A PHYSICIAN SHALL not permit motives of profit to influence the free and independent exercise professional judgment on behalf of patients.

A PHYSICIAN SHALL, in all types of medical practice, be dedicated to providing competent medical service in full technical and moral independence, with compassion and respect for human dignity.

A PHYSICIAN SHALL deal honestly with patients and colleagues, and strive to expose those

physicians deficient in character or competence, or who engage in fraud or deception. The following practices are deemed to be unethical conduct:

(a) Self advertising by physicians, unless permitted by the laws of the country and the Code of Ethics of the National Medical Association.

(b) Paying or receiving any fee or any other consideration solely to procure the referral of a patient or for prescribing or referring a patient to any source.

A PHYSICIAN SHALL respect the rights of patients, of colleagues, and of other health professionals, and shall safeguard patient confidences.

A PHYSICIAN SHALL act only in the patient's interest when providing medical care which might have the effect of weakening the physical and mental condition of the patient.

A PHYSICIAN SHALL use great caution in divulging discoveries or new techniques or treat-

ment through non-professional channels.

A PHYSICIAN SHALL certify only that which he has personally verified.

Duties of physicians to the sick

A PHYSICIAN SHALL always bear in mind the obligation of preserving human life.

A PHYSICIAN SHALL owe his patients complete loyalty and all the resources of his science. Whenever an examination or treatment is beyond the physician's capacity he should summon another physician who has the necessary ability.

A PHYSICIAN SHALL preserve absolute confidentiality on all he knows about his patient even after the patient has died.

A PHYSICIAN SHALL give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care.

Duties of physicians to each other

A PHYSICIAN SHALL behave towards his colleagues as he would have them behave towards him.

A PHYSICIAN SHALL NOT entice patients from his colleagues.

A PHYSICIAN SHALL observe the principles of "The Declaration of Geneva" approved by the World Medical Association.

Subsecuently, the World Medical Association has considered and published material on a number of ethical matters.

Discrimination in medicine

The following motion on the subject of discrimination in medicine was adopted by the World Medical Assocition in 1973:

"Whereas: The Declaration of Geneva, adopted and published by the World Medical Association, states, inter alia, that, 'I (a medical practitioner) WILL NOT PERMIT considerations of religion,nationality, race, party politics or social standing to intervene between my duty and my patient';

THEREFORE, BE IT RESOLVED by the 27th World Medical Assembly meeting in Munich, that the World Medical Association vehemently

condemns colour, political and religious discrimination of any form in the training of medical practitioners and in the practice of medicine and in the provision of health services for the peoples of the world."

Rights of the patient

In 1981 the World Medical Association adopted a Statement on the rights of the patient. Known as the Declaration of Lisbon, it reads:

Recognizing that there may be practical, -- ethical or legal difficulties, a physician should always act according to his/her conscience and always in the best interest of the patient. The following Declaration represents some of the principal rights which the medical profession seeks to provide to patients.

Whenever legislation or government action denies these rights of the patient, physicians should seek by appropiate means to assure or to restore them.

(a) The patient has the right to choose his

physician freely.

(b) The patient has the right to be cared for by a physician who is free to make clinical and ethical judgements without any outside interference.

(c) The patient has the right to accept or refuse treatment after reciving adequate - information.

(d) The patient has the right to expect that his physician will respect the confidential nature of all his medical and personal details.

(e) The patient has the right to die in dignity.

(f) The patient has the right to receive or to decline spiritual and moral comfort including the help of a minister of an appropriate religion.

Torture and other cruel, inhuman or degra-- ding treatment or punishment.

In 1975 the World Medical Association adopted the following guidelines for medical -

doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to detention and Imprisonment (Declaration of Tokyo):

Preamble

It is the privilege of the medical doctor to practise medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease the suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity.

For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

Declaration

(1) The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

(2)The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.

(3) The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.

(4) A doctor must have complete clinical independence in deciding upon the care of

a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive, whether phersonal, collective or political, shall prevail against this higher pupose.

(5) Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The dicision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.

(6) The Word Medical Association will support and should encourage the international community, the national medical association and fellow doctor, to support the doctor and his

or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

As a profession, medicine is dedicated to healing. It is natural for physicians to be concerned when medical skills are used in manners opposite to healing. The American Medical Association (AMA) House of Delegates has adopted a resolution reaffirming the stand against physician participation in torture. It reads, in part:

Whereas, Physicians have been targets of political reprisal, attack, and imprisonment in some countries for their open opposition to policies and expressions by their governments, and

Whereas, In other cases, physicians actively have participated in campaigns against the human rights of those who would speak out

in opposition to policies of their governments; and

Wheras, The United Nations and other international organizations have decried both the persecution of medical personnel for their humanitarian efforts as well as the participation by medical personnel in the violations of human rights of others....

Therefore be it

RESOLVED, That the AMA House of Delegates reiterate its endorsement of the 1975 World Medical Association Declaration of Tokyo, which provides guidelines for physicians in cases of torture and other cruel, inhumane, or degrading treatment or punishment in relatin to detention or imprisonment; and be it further

RESOLVED, That the AMA House of Delegates express its sympathy to those physicians who have been subject to imprisonment or torture because oftheir humanitarian efforts to improve the health of their patients.

SUPPLEMENTARY APPENDIX

IN THE UNITD STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

RAFAEL M. MONTANO, M.D.	*	
	*	
V.	*CIVIL No.JFM-84	
	*	4608
	*	
PRINCE GEORGE'S COUNTY	*	
	*	
MARYLAND, ET AL.	*	

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MEMORANDUM

This is a pro se action in which plaintiff alleges thathe was wrongfully fired as a medical resident because of his Mexican origin. Defendants have moved for summary judgment. The action es clearly frivolous and defendants' motion will be granted.[1]

As a threshold matter, it clearly appears that plaintiff has not made a prima facie showing he was racially dicriminated against.[2]

1.-Plaintiff alleges civil rights abuses, during his employment after his arrest and until the present time.

2.- The Court equivocally states that, if a plaintiff does not make a prima facie showing that he was racially discriminated against, his civil rights will be denied.

As a dark- skinned caucasian, the racial class to which he may belong seems to be all Hispanics, Indians and native Americans which in certain circumstances, can be considered "non-white." See, e.g., Gonzales v. Stanford Applied Engineering, Inc., 597 F.2d 1298, 1300 (9th Cir. 1979); Carrillo v. Illinois Bell Tel. Co., 538 F. Supp. 793, 796-97 (N.D. III.1982); Martinez v. Hazelton Research Animals, Inc., 430 F. Supp.186,187-88 (D.Md. 1977).[3] Defendant, Prince George's General Hospital, hired twelve resident physicians in its Family Practice in 1982-83, and three of the residents, excluding plaintiff,fell within this protected class.[4]

3.- The Court establishes that plaintiff es a dark-skinned caucasian for the purposes of this action, that if he was denied equal protection under the law during and after his employment with defendants, it's inmaterial.

4.- In 1982-83, twelve residents were hired at the Family Health Center in defedant hospital: a black, a mexican, a hindu and 9 caucasians. Of these 9 caucasians, only one held an M.D. degree , i.e. 8 caucasians were medical students working as physicians.

Of the three residentes hired for the second year in 1983-84, one fell within this class.[5] Dr. Montano contends that he should have been included in this latter group. These hiring statistics do not give rise to any inference of discrimination in termination.[6]

In any event, the record unequivocally establishes that defendant's discharge of plaintiff was justifiable.[7] When Plaintiff applied for residency appointment with defendant, he submitted fabricated reference letters and FLEX examination scores. As he later admitted to representatives of defendant,[8] he falsified

5.- In 1983-84, three residents were hired for the second year: a hindu and two caucasians, both of these caucasians lacked M.D. degrees, one of them came from a non-approved medical school.

6.- See Griggs v. Duke Power Co., 401 U.S. 436.

7.- What the record unequevocally establishes is that plaintiff always afforded defendat hospital's patients quality care. Indeed, never a defendant hospital's patient died while under plaintiff's care nor suffered as a result of his poor judgment, lack of medical skills & techniques, or lack of medical experience on plaintiff's part.

8.- Plaintiff, under torture, did admit to representatives of defendant that he falsified certain papers but no credentials, as defendants have always longed for.

his credentials and did not advise defendant in his application that he had been academically dismissed from medical school and was not licensed to practice medicine in Mexico. [9] During the year that he was with defendant (before defendant learned of the falsifications),falsifications), plaintiff's work had been evaluated as unsatisfactory and he had been - placed on academic probation.[10] These facts clearly justified his discharge. Indeed, if the defendant hospital had not discharged him , it would have been professionally - irresponsible.[11]

9.- This is an infamous accusation made solely by defendants.

10.- It was not during the year the plaintiff was with defendant that plaintiff's work had been evaluated as unsatisfactory, more specifically, it was during the peak of defendant representatives'jealousy, i.e., on the eve of plaintiff's termination, that such evaluations were fabricated, nor "..he had been placed on academic probation" either.

11.-Indeed, it is professionally and legally irresponsible not to pursue criminal charges:
(a) "For Medical Doctors Concerning torture and other cruel, inhuman, or degrading treatment or punishment." (DECLARATION OF TOKYO. Adopted by the 29th World medical Assembly, Tokyo, October 1975).
(b) Inadvertent manslaughter, wronful death, etc.,
(c) Embezzlement of plaintiff's & hospital funds.
(d) For aiding or abetting unauthorized persons in the practice of Medicine (so-called "Fifth Pathway" students not sponsored by the Medical School Faculty of the University of Maryland.